

**ASSEMBLY BILL**

**No. 2559**

**Introduced by Assembly Member Benoit**

February 23, 2006

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An act to amend Sections 191.5, 192, 192.5, 193, 193.5, and 193.7 of the Penal Code, and to amend Sections 13350, 13350.5, and 13954 of the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

AB 2559, as introduced, Benoit. Vehicles: driving under the influence: gross manslaughter.

(1) Existing law defines vehicular manslaughter as, among other things, driving a vehicle or operating a vessel in violation of specified provisions relating to driving or operating under the influence of alcohol, drugs, or both alcohol and drugs, driving with an excessive blood alcohol concentration, or driving while addicted to any drug (DUI), in the commission of an unlawful act, not amounting to a felony, but without gross negligence; or driving or operating in violation of the DUI provisions, in the commission of a lawful act that might produce death, in an unlawful manner, but without gross negligence. Vehicular manslaughter, as specified, is a misdemeanor or a felony punishable either by imprisonment in the county jail for not more than one year or by imprisonment in the state prison for 16 months or 2 or 4 years.

Existing law defines gross vehicular manslaughter while intoxicated as the unlawful killing of a human being without malice aforethought, in the driving of a vehicle or operating of a vessel, where the driving or operating was in violation of the DUI provisions and the killing was either the proximate result of the commission of an unlawful act, not amounting to a felony, and with gross negligence, or the proximate

result of the commission of a lawful act that might produce death, in an unlawful manner, and with gross negligence. Gross vehicular manslaughter while intoxicated is a felony punishable by imprisonment in the state prison for 4, 6, or 10 years.

This bill would delete the definition of vehicular manslaughter specified above, and would recast the definition of gross vehicular manslaughter while intoxicated to include the above described offense where the intoxication was a contributing factor in the killing. The bill would provide a term of imprisonment of 3, 5, or 7 years for gross vehicular manslaughter where intoxication is a contributing factor.

The bill would specify, as to gross vehicular manslaughter while intoxicated and operating a vessel, the operation of certain other water devices are included in the above described prohibition.

The bill would set forth legislative findings.

(2) Existing law, known as “the 3 strikes law” and codified in 2 initiative statutes, prescribes alternative prison sentencing for any person convicted of a felony who has one or more prior serious or violent felony convictions. The initiative statutes provide that any amendment of these provisions requires a  $\frac{2}{3}$  vote of the membership of each house of the Legislature.

This bill would provide that a felony conviction of gross vehicular manslaughter where the intoxication was a contributing factor in the killing, as specified in (1) above, shall not constitute a current felony conviction for purposes of sentencing under the “3 strikes” provisions of those initiative statutes. Because the bill would constitute an amendment of those initiative statutes, the bill would require a  $\frac{2}{3}$  vote.

(3) The bill would make conforming changes in related provisions of law.

(4) Because the bill would expand the scope of existing crime, it would create a state mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

SECTION 1. Section 191.5 of the Penal Code is amended to read:

191.5. (a) ~~Gross~~*The Legislature finds and declares that driving a vehicle in violation of Section 23140, 23152, or 23153 of the Vehicle Code is an inherently dangerous, unlawful, and grossly negligent act.*

(b) (1) Gross vehicular manslaughter while intoxicated is the unlawful killing of a human being without malice aforethought, in the driving of a vehicle, where the driving was in violation of Section 23140, 23152, or 23153 of the Vehicle Code, and the killing was either the proximate result of the commission of an unlawful act, not amounting to a felony, and with gross negligence, or the proximate result of the commission of a lawful act ~~which~~ *that* might produce death, in an unlawful manner, and with gross negligence.

~~(b)~~  
(2) Gross vehicular manslaughter while intoxicated also includes ~~operating a vessel the killing of a human being without malice aforethought in the operating of a vessel or other water device in violation of subdivision (b), (c), (d), (e), or (f) of Section 655 of the Harbors and Navigation Code, and in the commission of an unlawful act, not amounting to felony, and with gross negligence; or operating a vessel in violation of subdivision (b), (c), (d), (e), or (f) of Section 655 of the Harbors and Navigation Code, and in the commission of a lawful act which might produce death, in an unlawful manner, and with gross negligence and the killing occurred as a proximate result of an unlawful or lawful act in the manner described in paragraph (1).~~

~~(c) Except as provided in subdivision (d), gross vehicular manslaughter while intoxicated is punishable by imprisonment in the state prison for 4, 6, or 10 years.~~

~~(d) Any person convicted of violating this section who has one or more prior convictions of this section or of paragraph (1) or (3) of subdivision (c) of Section 192, subdivision (a) or (c) of Section 192.5 of this code, or of violating Section 23152 punishable under Sections 23540, 23542, 23546, 23548, 23550, or 23552 of, or convicted of Section 23153 of, the Vehicle Code,~~

1 shall be punished by imprisonment in the state prison for a term  
2 of 15 years to life. Article 2.5 (commencing with Section 2930)  
3 of Chapter 7 of Title 1 of Part 3 shall apply to reduce the term  
4 imposed pursuant to this subdivision.

5 (c) (1) Gross vehicular manslaughter while intoxicated is the  
6 unlawful killing of a human being without malice aforethought,  
7 in the driving of a vehicle, where the intoxication was a  
8 contributing factor in the killing and the driving was in violation  
9 of Section 23140, 23152, or 23153 of the Vehicle Code.

10 (2) Gross vehicular manslaughter while intoxicated also  
11 includes the killing of a human being without malice  
12 aforethought in the operating of a vessel or water device in  
13 violation of subdivision (b), (c), (d), (e), or (f) of Section 655 of  
14 the Harbors and Navigation Code and the killing occurred where  
15 the intoxication was a contributing factor in the killing in the  
16 manner described in paragraph (1).

17 (d) (1) Gross vehicular manslaughter while intoxicated, as  
18 described in subdivision (b), is punishable by imprisonment in  
19 the state prison for 4, 6, or 10 years.

20 (2) Gross vehicular manslaughter while intoxicated, as  
21 described in subdivision (c), is punishable by imprisonment in  
22 the state prison for three, five, or seven years.

23 (e) A person convicted of violating this section who has one or  
24 more prior convictions of this section or of paragraph (1) or (3)  
25 of subdivision (c) of Section 192, subdivision (a) or (c) of Section  
26 192.5 of this code, or of violating Section 23152 punishable  
27 under Section 23540, 23542, 23546, 23548, 23550, or 23552 of,  
28 or convicted of Section 23153 of, the Vehicle Code, shall be  
29 punished by imprisonment in the state prison for a term of 15  
30 years to life. Article 2.5 (commencing with Section 2930) of  
31 Chapter 7 of Title 1 of Part 3 shall apply to reduce the term  
32 imposed pursuant to this subdivision.

33 (f) A felony conviction of gross vehicular manslaughter while  
34 intoxicated, as described in subdivision (c), shall not constitute a  
35 current felony conviction for purposes of subdivisions (b) to (i),  
36 inclusive, of Section 667 or Section 1170.12.

37 (e)

38 (g) This section shall not be construed as prohibiting or  
39 precluding a charge of murder under Section 188 upon facts  
40 exhibiting wantonness and a conscious disregard for life to

1 support a finding of implied malice, or upon facts showing  
2 malice consistent with the holding of the California Supreme  
3 Court in *People v. Watson*, 30 Cal. 3d 290.

4 ~~(f) This section shall not be construed as making any homicide~~  
5 ~~in the driving of a vehicle or the operation of a vessel punishable~~  
6 ~~which is not a proximate result of the commission of an unlawful~~  
7 ~~act, not amounting to felony, or of the commission of a lawful act~~  
8 ~~which might produce death, in an unlawful manner.~~

9 ~~(g)~~  
10 (h) For the penalties in subdivision ~~(d)~~ (e) to apply, the  
11 existence of any fact required under subdivision ~~(d)~~ (e) shall be  
12 alleged in the information or indictment and either admitted by  
13 the defendant in open court or found to be true by the trier of  
14 fact.

15 SEC. 2. Section 192 of the Penal Code is amended to read:

16 192. Manslaughter is the unlawful killing of a human being  
17 without malice. It is of three kinds:

18 (a) Voluntary—upon a sudden quarrel or heat of passion.

19 (b) Involuntary—in the commission of an unlawful act, not  
20 amounting to felony; or in the commission of a lawful act which  
21 might produce death, in an unlawful manner, or without due  
22 caution and circumspection. This subdivision shall not apply to  
23 acts committed in the driving of a vehicle.

24 (c) Vehicular—

25 (1) Except as provided in Section 191.5, driving a vehicle in  
26 the commission of an unlawful act, not amounting to felony, and  
27 with gross negligence; or driving a vehicle in the commission of  
28 a lawful act which might produce death, in an unlawful manner,  
29 and with gross negligence.

30 ~~(2) Except as provided in paragraph (3), driving~~ *Driving* a  
31 vehicle in the commission of an unlawful act, not amounting to  
32 felony, but without gross negligence; or driving a vehicle in the  
33 commission of a lawful act which might produce death, in an  
34 unlawful manner, but without gross negligence.

35 ~~(3) Driving a vehicle in violation of Section 23140, 23152, or~~  
36 ~~23153 of the Vehicle Code and in the commission of an unlawful~~  
37 ~~act, not amounting to felony, but without gross negligence; or~~  
38 ~~driving a vehicle in violation of Section 23140, 23152, or 23153~~  
39 ~~of the Vehicle Code and in the commission of a lawful act which~~

1 ~~might produce death, in an unlawful manner, but without gross~~  
2 ~~negligence.~~

3 ~~(4) Driving~~

4 ~~A~~*a* vehicle in connection with a violation of paragraph (3) of  
5 subdivision (a) of Section 550, where the vehicular collision or  
6 vehicular accident was knowingly caused for financial gain and  
7 proximately resulted in the death of ~~any~~ *a* person. This provision  
8 shall not be construed to prevent prosecution of a defendant for  
9 the crime of murder.

10 This section shall not be construed as making ~~any~~ *a* homicide  
11 in the driving of a vehicle punishable ~~which~~ *that* is not a  
12 proximate result of the commission of an unlawful act, not  
13 amounting to felony, or of the commission of a lawful act ~~which~~  
14 *that* might produce death, in an unlawful manner.

15 “Gross negligence,” as used in this section, shall not be  
16 construed as prohibiting or precluding a charge of murder under  
17 Section 188 upon facts exhibiting wantonness and a conscious  
18 disregard for life to support a finding of implied malice, or upon  
19 facts showing malice, consistent with the holding of the  
20 California Supreme Court in *People v. Watson*, 30 Cal. 3d 290.

21 SEC. 3. Section 192.5 of the Penal Code is amended to read:

22 192.5. Vehicular manslaughter pursuant to subdivision (c) of  
23 Section 192 includes:

24 (a) Except as provided in subdivision (b) of Section 191.5,  
25 operating a vessel in the commission of an unlawful act, not  
26 amounting to felony, and with gross negligence; or operating a  
27 vessel in the commission of a lawful act which might produce  
28 death, in an unlawful manner, and with gross negligence.

29 (b) ~~Except as provided in subdivision (c), operating~~ *Operating*  
30 a vessel in the commission of an unlawful act, not amounting to  
31 felony, but without gross negligence; or operating a vessel in the  
32 commission of a lawful act which might produce death, in an  
33 unlawful manner, but without gross negligence.

34 (c) ~~Operating a vessel in violation of subdivision (b), (c), (d),~~  
35 ~~(e), or (f) of Section 655 of the Harbors and Navigation Code,~~  
36 ~~and in the commission of an unlawful act, not amounting to~~  
37 ~~felony, but without gross negligence; or operating a vessel in~~  
38 ~~violation of subdivision (b), (c), (d), (e), or (f) of Section 655 of~~  
39 ~~the Harbors and Navigation Code, and in the commission of a~~

1 ~~lawful act which might produce death, in an unlawful manner,~~  
2 ~~but without gross negligence.~~

3 ~~(d) This section shall become operative on January 1, 1992.~~

4 SEC. 4. Section 193 of the Penal Code is amended to read:

5 193. (a) Voluntary manslaughter is punishable by  
6 imprisonment in the state prison for three, six, or eleven years.

7 (b) Involuntary manslaughter is punishable by imprisonment  
8 in the state prison for two, three, or four years.

9 (c) Vehicular manslaughter is punishable as follows:

10 (1) A violation of paragraph (1) of subdivision (c) of Section  
11 192 is punishable either by imprisonment in the county jail for  
12 not more than one year or by imprisonment in the state prison for  
13 two, four, or six years.

14 (2) A violation of paragraph (2) of subdivision (c) of Section  
15 192 is punishable by imprisonment in the county jail for not more  
16 than one year.

17 ~~(3) A violation of paragraph (3) of subdivision (c) of Section~~  
18 ~~192 is punishable either by imprisonment in the county jail for~~  
19 ~~not more than one year or by imprisonment in the state prison for~~  
20 ~~16 months or two or four years.~~

21 ~~(4)~~

22 (3) A violation of paragraph ~~(4)~~ (3) of subdivision (c) of  
23 Section 192 is punishable by imprisonment in the state prison for  
24 ~~4 four,~~ 6 six, or 10 years.

25 SEC. 5. Section 193.5 of the Penal Code is amended to read:

26 193.5. Manslaughter committed during the operation of a  
27 vessel is punishable as follows:

28 (a) A violation of subdivision (a) of Section 192.5 is  
29 punishable either by imprisonment in the county jail for not more  
30 than one year or by imprisonment in the state prison for two,  
31 four, or six years.

32 (b) A violation of subdivision (b) of Section 192.5 is  
33 punishable by imprisonment in the county jail for not more than  
34 one year.

35 ~~(c) A violation of subdivision (c) of Section 192.5 is~~  
36 ~~punishable either by imprisonment in the county jail for not more~~  
37 ~~than one year or by imprisonment in the state prison for 16~~  
38 ~~months or two or four years.~~

39 SEC. 6. Section 193.7 of the Penal Code is amended to read:

1 193.7. ~~Any~~A person convicted of a violation of paragraph (3)  
2 of subdivision (c) of Section 192~~—which as that section read on~~  
3 *January 1, 2007, or Section 191.5, that* occurred within seven  
4 years of two or more separate violations of Section 23103, as  
5 specified in Section 23103.5, of, or Section 23152 or 23153 of,  
6 the Vehicle Code, or any combination thereof,~~—which that~~  
7 resulted in convictions, shall be designated as an habitual traffic  
8 offender subject to paragraph (3) of subdivision (e) of Section  
9 14601.3 of the Vehicle Code, for a period of three years,  
10 subsequent to the conviction. The person shall be advised of this  
11 designation pursuant to subdivision (b) of Section 13350 of the  
12 Vehicle Code.

13 SEC. 7. Section 13350 of the Vehicle Code is amended to  
14 read:

15 13350. (a) The department immediately shall revoke the  
16 privilege of~~any~~ a person to drive a motor vehicle upon receipt of  
17 a duly certified abstract of the record of any court showing that  
18 the person has been convicted of any of the following crimes or  
19 offenses:

20 (1) Failure of the driver of a vehicle involved in an accident  
21 resulting in injury or death to any person to stop or otherwise  
22 comply with Section 20001.

23 (2) ~~Any~~A felony in the commission of which a motor vehicle  
24 is used, except as provided in Section 13351, 13352, or 13357.

25 (3) Reckless driving causing bodily injury.

26 (b) If a person is convicted of a violation of Section 23152  
27 punishable under Section 23546, 23550, or 23550.5, or a  
28 violation of Section 23153 punishable under Section 23550.5 or  
29 23566, including a violation of paragraph (3) of subdivision (c)  
30 of Section 192 *of the Penal Code, as that section read on*  
31 *January 1, 2007, or Section 191.5* of the Penal Code, as provided  
32 in Section 193.7 of that code, the court shall, at the time of  
33 surrender of the driver's license or temporary permit, require the  
34 defendant to sign an affidavit in a form provided by the  
35 department acknowledging his or her understanding of the  
36 revocation required by paragraph (5), (6), or (7) of subdivision  
37 (a) of Section 13352, and an acknowledgment of his or her  
38 designation as a habitual traffic offender. A copy of this affidavit  
39 shall be transmitted, with the license or temporary permit, to the  
40 department within the prescribed 10 days.



1 (c) The department shall not reinstate the privilege revoked  
2 under subdivision (a) until the expiration of one year after the  
3 date of revocation and until the person whose privilege was  
4 revoked gives proof of financial responsibility as defined in  
5 Section 16430.

6 SEC. 8. Section 13350.5 of the Vehicle Code is amended to  
7 read:

8 13350.5. Notwithstanding Section 13350, for the purposes of  
9 this article, conviction of a violation of *Section 191.5 of the*  
10 *Penal Code or of* paragraph (3) of subdivision (c) of Section 192  
11 of the Penal Code, *as that section read on January 1, 2007*, is a  
12 conviction of a violation of Section 23153.

13 SEC. 9. Section 13954 of the Vehicle Code is amended to  
14 read:

15 13954. (a) Notwithstanding any other provision of this code,  
16 the department immediately shall suspend or revoke the driving  
17 privilege of any person who the department has reasonable cause  
18 to believe was in some manner involved in an accident while  
19 operating a motor vehicle under the following circumstances at  
20 the time of the accident:

21 (1) The person had 0.08 percent or more, by weight, of alcohol  
22 in his or her blood.

23 (2) He or she proximately caused the accident as a result of  
24 any act prohibited, or the neglect of any duty imposed, by law.

25 (3) The accident occurred within five years of the date of a  
26 ~~violation of conviction for violating Section 191.5 of the Penal~~  
27 ~~Code or paragraph (3) of subdivision (c) of Section 192 of the~~  
28 ~~Penal Code that resulted in a conviction~~, *as that section read on*  
29 *January 1, 2007*.

30 (b) If an accident described in subdivision (a) does not result  
31 in a conviction or finding of violation of Section 23152 or 23153,  
32 the department shall suspend the driving privilege under this  
33 section for one year from the date of commencement of the  
34 original suspension. After the one-year suspension period, the  
35 driving privilege may be reinstated if evidence establishes to the  
36 satisfaction of the department that no grounds exist that would  
37 authorize the refusal to issue a license and that reinstatement of  
38 the driving privilege would not jeopardize the safety of the  
39 person or other persons upon the highways, and if the person

1 gives proof of financial responsibility, as defined in Section  
2 16430.

3 (c) If an accident described in subdivision (a) does result in a  
4 conviction or finding of a violation of Section 23152 or 23153,  
5 the department shall revoke the driving privilege under this  
6 section for three years from the date of commencement of the  
7 original revocation. After the three-year revocation period, the  
8 driving privilege may be reinstated if evidence establishes to the  
9 satisfaction of the department that no grounds exist that would  
10 authorize the refusal to issue a license and that reinstatement of  
11 the driving privilege would not jeopardize the safety of the  
12 person or other persons upon the highways, and if the person  
13 gives proof of financial responsibility.

14 (d) ~~Any~~A revocation action under subdivision (c) shall be  
15 imposed as follows:

16 (1) If the accident results in a first conviction of a violation of  
17 Section 23152 or 23153, or if the person was convicted of a  
18 separate violation of Section 23152 or 23153 that occurred within  
19 five years of the accident, the period of revocation under  
20 subdivision (c) shall be concurrent with any period of restriction,  
21 suspension, or revocation imposed under Section 13352,  
22 13352.4, or 13352.5.

23 (2) If the person was convicted of two or more separate  
24 violations of Section 23152 or 23153, or both, that occurred  
25 within five years of the accident, the period of revocation under  
26 subdivision (c) shall be cumulative and shall be imposed  
27 consecutively with any period of restriction, suspension, or  
28 revocation imposed under Section 13352 or 13352.5.

29 (e) The department immediately shall notify the person in  
30 writing of the action taken and, upon the person's request in  
31 writing and within 15 days from the date of receipt of that  
32 request, shall grant the person an opportunity for a hearing in the  
33 same manner and under the same conditions as provided in  
34 Article 3 (commencing with Section 14100) of Chapter 3, except  
35 as otherwise provided in this section. For purposes of this  
36 section, the scope of the hearing shall cover the following issues:

37 (1) Whether the peace officer had reasonable cause to believe  
38 the person had been driving a motor vehicle in violation of  
39 Section 23152 or 23153.

40 (2) Whether the person had been placed under lawful arrest.

1 (3) Whether a chemical test of the person's blood, breath, or  
2 urine indicated that the blood-alcohol level was 0.08 percent or  
3 more, by weight, at the time of testing.

4 If the department determines, upon a hearing of the matter, that  
5 the person had not been placed under lawful arrest, or that a  
6 chemical test of the person's blood, breath, or urine did not  
7 indicate a blood-alcohol level of 0.08 percent or more, by weight,  
8 at the time of testing, the suspension or revocation shall be  
9 terminated immediately.

10 (f) This section applies if the accident occurred on or after  
11 January 1, 1990, without regard for the dates of the violations  
12 referred to in subdivisions (a) and (d).

13 (g) Notwithstanding subdivision (f), if a person's privilege to  
14 operate a motor vehicle is required to be suspended or revoked  
15 pursuant to this section as it read before January 1, 1990, as a  
16 result of an accident that occurred before January 1, 1990, the  
17 privilege shall be suspended or revoked pursuant to this section  
18 as it read before January 1, 1990.

19 ~~(h) This section shall become operative on September 20,~~  
20 ~~2005.~~

21 SEC. 10. No reimbursement is required by this act pursuant  
22 to Section 6 of Article XIII B of the California Constitution  
23 because the only costs that may be incurred by a local agency or  
24 school district will be incurred because this act creates a new  
25 crime or infraction, eliminates a crime or infraction, or changes  
26 the penalty for a crime or infraction, within the meaning of  
27 Section 17556 of the Government Code, or changes the  
28 definition of a crime within the meaning of Section 6 of Article  
29 XIII B of the California Constitution.